



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 629459

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 629459, 629460 and 629461, the claimant appeals from the decisions of the Administrative Law Judge, filed May 18, 2023, insofar as they modified the initial determinations (1) holding the claimant ineligible to receive benefits, effective January 18, 2021 through August 15, 2021, on the basis that the claimant was not totally unemployed, to be effective for one day during the weeks ending January 24 and August 8, 2021 only, and as so modified, sustained the initial determination; (2) charging the claimant with an overpayment of \$1,350 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), to an amount consistent with decisions, and as so modified, sustained the initial determination; and (3) reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$202.50 on the basis that the claimant made willful misrepresentations to obtain benefits, to a penalty consistent with decisions, and as so modified, sustained the initial determination. The Judge referred the amount of the overpayment and civil penalty back to Department of Labor for recalculation in accordance with decisions.

At the combined a telephone conference hearing before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant contended at the hearing that he reported one day of work when he certified for benefits for the weeks ending January 24 and August 8, 2021, and contended that he had a record to support his contention. The

Judge did not offer the claimant an opportunity to adjourn the hearing to produce the record and did not adjourn the hearing for the Commissioner's appearance. At the further hearing, the Commissioner should explain its position with respect to the Certification Record Report entered into evidence as Exhibit 5, including whether such record is maintained in the ordinary course of business. The claimant should produce his record of his certification. The Judge may take any other further testimony and evidence the Judge deems relevant.

The claimant is apprised that the failure to produce his record may result in the Judge drawing an adverse inference.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as it modified the initial determinations, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant should produce his record of his certification; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER